

Since biobased feedstocks are largely produced in rural settings and, because of their bulk, require pre-processing or manufacturing close to where they are grown, increased dependence on biobased products appears likely to increase the amount of pre-processing and manufacturing of biobased products in rural regions of the Nation. This trend would help to create new investment, job formation, and income generation in these rural regions.

The third objective is to enhance the Nation's energy security by substituting domestically produced biobased products for fossil energy-based products derived from imported oil and natural gas. The growing dependence of the Nation on imported oil and natural gas, along with heightened concerns about political instability in some of the oil rich regions in the world, have led the Congress to place a higher priority on domestically produced energy and biobased products.

III. Background

In 1999, as required by section 504 of Executive Order 13101, "Greening the Government through Waste Prevention, Recycling, and Federal Acquisition," the U.S. Department of Agriculture (USDA) Biobased Products Coordination Council (now called the Biobased Products and Bioenergy Coordination Council) published a notice in the **Federal Register** (64 FR 44185, Aug. 13, 1999) to solicit public comments on a process for considering items for inclusion on a USDA Biobased Products List and suggested criteria for including biobased items on that list. The Council was established by the Secretary of Agriculture and is comprised of USDA representatives with commercialization, legislative, marketing, procurement, rural development, research, and other technical expertise. Others consulted regarding the listing procedures described in the August 1999 notice included the Office of the Federal Environmental Executive, NIST, EPA, the Federal Trade Commission (FTC), environmental organizations, and agricultural organizations. Also advising USDA were Federal members of the Executive Order 13101 Inter-Agency Advisory Group.

The requirements of section 9002 differ from those of Executive Order 13101. For example, the Executive Order and section 9002 use slightly different definitions of the term "biobased product." Another distinction is that the Executive Order encourages, but does not require, procurement of biobased products. Section 9002 establishes a mandatory procurement preference, with limited exceptions, for

designated items. The Executive Order envisions a list of specific products to be promulgated, whereas section 9002 requires guidelines designating "items which are or can be produced with biobased products" and recommended procurement practices for both biobased products and items containing biobased products.

Under section 9002, the term "biobased products" refers to "a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials." The term "item" refers to a subcategory or grouping of similar products containing biobased content. An item is populated by commercial and industrial products available for purchase by Federal agencies. An example of an item (or subcategory) under the "Lubricants and functional fluids category" discussed later in this document is hydraulic, power steering, and transmission fluids. Under Executive Order 13101, the term "biobased product" was used to mean what the term "item" means under section 9002.

USDA no longer intends to promulgate a list of biobased products as envisioned in Executive Order 13101. Rather, USDA will designate items that qualify for preferred procurement as required by section 9002.

The statutorily required elements of the section 9002 guidelines further distinguish the guidelines from the Executive Order list. Despite these differences, comments received in response to the 1999 proposed procedures to implement the biobased products list were taken into consideration when preparing proposed product categories and selection criteria for these proposed guidelines.

For purposes of identifying a Federal agency in implementing section 9002, we have chosen to use the definition of "Federal agency" found in the Federal Acquisition Regulation (48 CFR 2.101), *i.e.*, "any executive agency or any independent establishment in the legislative or judicial branch of Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction)."

Once USDA designates an item, responsibility for complying with section 9002 rests with Federal agencies. Responsibilities and implementation strategies of USDA, Federal agencies, the Office of Federal Procurement Policy, and manufacturers

and vendors, respectively, are outlined briefly below in section IV.

This program is modeled on the EPA *Comprehensive Procurement Guideline for Products Containing Recovered Materials*, known as the Comprehensive Procurement Guideline (CPG), 40 CFR part 247, which designates items that are or can be made with recovered materials. The CPG implements section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962), as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. Executive Order 13101 also facilitated RCRA implementation. RCRA requires EPA to designate items that are or can be produced with recovered materials and to recommend practices for the procurement of designated items by procuring agencies. Executive Order 13101 directs EPA to designate the products in the CPG and to provide purchasing recommendations in Recovered Materials Advisory Notices (RMANs). Information on the CPG and the RMANs can be found on the Internet at <http://www.epa.gov/cpg>.

The legislative history of section 9002 suggests that Congress intended to use this program to speed the development of new markets for biobased products, rather than to support mature markets for products. Hence, USDA has crafted this program to focus on new market development. It is USDA's intention to exclude from this program biobased products it concludes have mature markets. USDA proposes to use a number of filters or tests to exclude products in what it defines as mature markets. If a product falls within an excluded group of products in any one filter, it is excluded from consideration under the program to implement section 9002. To be eligible for preferred procurement under section 9002, a product must be found eligible under each of these filters or tests. In the first test, silk, cotton and wool garments, household items, and industrial or commercial products are excluded, unless made with a substantial amount of a biobased plastic product. Also excluded are wood products made from traditionally harvested forest materials.

Biobased products marketed only in regional or in single specialized markets, rather than national markets, are not considered to be in mature markets for purposes of this program. Finally, products developed, or that have made significant market penetration, more recently than 1972 also are not considered to be in mature markets for purposes of this program. The first of several oil supply and price shocks, which occurred in the United States beginning at about 1972, was an